

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 55

May 1, 1997, 2:06 pm
Page S-3880 Temp. Record

VOLUNTEER PROTECTION ACT/Final Passage

SUBJECT: Volunteer Protection Act of 1997 . . . S. 543. Final passage, as amended.

ACTION: BILL PASSED, 99-1

SYNOPSIS: S. 543, the Volunteer Protection Act of 1997, will reform liability laws to provide volunteers protection from negligence lawsuits. Details are provided below.

Liability limits:

- in general, a volunteer who causes harm by an act or omission on behalf of a nonprofit organization or governmental entity will not be held liable unless the harm is caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the person harmed;

The following conditions and exceptions will apply:

- limits will only apply to actions taken by volunteers within the scope of their responsibilities;
- if appropriate or required, limits will only apply if volunteers are in conformance with applicable State licensing or similar requirements;
- limits will not apply for harm caused by a volunteer operating a vehicle in a State which requires a license or insurance to operate that type of vehicle;
- limits will not apply to actions brought by nonprofit organizations or governmental entities against their volunteers;
- limits will apply only to volunteers, not the organizations for which they work;
- States will be allowed to have laws that require nonprofit organizations and governmental entities to adhere to risk management procedures, such as volunteer training, as a condition of limiting volunteers' liability;
- States will be allowed to have laws that will limit volunteers' liability only if the nonprofit or governmental organizations for which they work meet State insurance or other requirements that establish a financially secure source from which injured parties may seek recovery; and

(See other side)

| YEAS (99) | | | | NAYS (1) | | NOT VOTING (0) | |
|---------------------------|---------------|---------------------------|---------------|--------------------------|------------------------|--------------------|------------------|
| Republican (54 or 98%) | | Democrats (45 or 100%) | | Republicans (1 or 2%) | Democrats (0 or 0%) | Republicans (0) | Democrats (0) |
| Abraham | Helms | Akaka | Johnson | Thompson | | | |
| Allard | Hutchinson | Baucus | Kennedy | | | | |
| Ashcroft | Hutchison | Biden | Kerrey | | | | |
| Bennett | Inhofe | Bingaman | Kerry | | | | |
| Bond | Jeffords | Boxer | Kohl | | | | |
| Brownback | Kempthorne | Breaux | Landrieu | | | | |
| Burns | Kyl | Bryan | Lautenberg | | | | |
| Campbell | Lott | Bumpers | Leahy | | | | |
| Chafee | Lugar | Byrd | Levin | | | | |
| Coats | Mack | Cleland | Lieberman | | | | |
| Cochran | McCain | Conrad | Mikulski | | | | |
| Collins | McConnell | Daschle | Moseley-Braun | | | | |
| Coverdell | Murkowski | Dodd | Moynihan | | | | |
| Craig | Nickles | Dorgan | Murray | | | | |
| D'Amato | Roberts | Durbin | Reed | | | | |
| DeWine | Roth | Feingold | Reid | | | | |
| Domenici | Santorum | Feinstein | Robb | | | | |
| Enzi | Sessions | Ford | Rockefeller | | | | |
| Faircloth | Shelby | Glenn | Sarbanes | | | | |
| Frist | Smith, Bob | Graham | Torricelli | | | | |
| Gorton | Smith, Gordon | Harkin | Wellstone | | | | |
| Gramm | Snowe | Hollings | Wyden | | | | |
| Grams | Specter | Inouye | | | | | |
| Grassley | Stevens | | | | | | |
| Gregg | Thomas | | | | | | |
| Hagel | Thurmond | | | | | | |
| Hatch | Warner | | | | | | |

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

- States will be allowed to have laws giving themselves and local governments the unlimited right to sue volunteers.

State preemption:

- State laws that are inconsistent with this Act will be preempted unless they provide greater protections to volunteers than this Act will provide; and
- States will be allowed to pass laws that weaken volunteer protections in this Act for actions that involve only within-State parties.

Punitive damages:

- punitive damages will not be awarded against a volunteer who caused harm while acting within the scope of his or her responsibilities unless the claimant establishes, by clear and convincing evidence, that the harm was proximately caused by an action of the volunteer that constituted willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the person harmed.

Joint and several liability:

- in any civil action against a volunteer, that volunteer will be liable only for the amount of noneconomic loss for which the court determines that volunteer bears responsibility (in other words, if a court determines that a volunteer bears only 1 percent of the responsibility for causing an injury, that volunteer will only pay for 1 percent of the noneconomic damages awarded; noneconomic damages include such damages as emotional pain).

Miscellaneous:

- none of the protections in this bill will be given to any volunteer who causes harm with misconduct: that constitutes a crime of violence or terrorism; that constitutes a hate crime; that involves a sexual offense; that involves a violation of a Federal or State civil rights law; or that is committed by the volunteer while under the influence of drugs or alcohol; and
- the effective date of the bill will be 90 days after enactment, and the bill will apply to any claim filed on or after the effective date, regardless of when the alleged harm occurred.

Those favoring final passage contended:

Once the filibuster ended (see vote Nos. 52-54), the rhetoric cooled and Senators from both parties sat down to work out their differences, and an accommodation was quickly reached. Several clarifications were added to the original language, and a few more substantive changes were made as well. A fair compromise has been reached that neither side loves but that both sides support. We urge our colleagues to vote in favor of final passage.

No arguments were expressed in opposition to final passage.